



PRELIMINARY DRAFT

No. 3355

PREPARED BY
LEGISLATIVE SERVICES AGENCY
2014 GENERAL ASSEMBLY

DIGEST

Citations Affected: IC 29-1; IC 29-3-9-12.

Synopsis: Probate administration. Provides for an enforcement action against a person who does not comply with a fiduciary's demand or instruction. Allows a court to award attorney's fees and costs in an enforcement proceeding if the person: (1) acts in bad faith in refusing to comply with the demand or instruction; or (2) refuses to respond to the fiduciary's demand or instruction within 10 business days after receiving the demand or instruction, if the demand or instruction is sufficient.

Effective: July 1, 2014.



A BILL FOR AN ACT to amend the Indiana Code concerning probate.

Be it enacted by the General Assembly of the State of Indiana:

SECTION 1. IC 29-1-8-4.5, AS AMENDED BY P.L.61-2006, SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2014]: Sec. 4.5. **(a)** The person claiming to be entitled to payment or delivery of the property belonging to the decedent may present to the court having jurisdiction over the decedent's estate an affidavit containing a statement of the conditions required under section (1)(b) of this chapter. Upon receipt of the affidavit, the court may, without notice and hearing, enter an order that the claimant is entitled to payment or delivery of the property.

(b) A court may, upon notice and hearing, award attorney's fees and costs to a person bringing an action under subsection (a) if the person indebted to the decedent or holding property of the decedent:

(1) acted in bad faith in refusing to pay or deliver the property belonging to the decedent; or

(2) refused to respond within ten (10) business days after receiving an affidavit from the person bringing an action under this section, if the affidavit is consistent with section 1 of this chapter.

SECTION 2. IC 29-1-13-17 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2014]: Sec. 17. **(a) If a person fails to comply with a personal representative's written demand or instruction that is consistent with this article regarding the property of the decedent, the personal representative may bring an enforcement proceeding to compel compliance with the written demand or instruction.**

(b) A court may award attorney's fees and costs to the estate in an enforcement proceeding under subsection (a) if the person indebted to the decedent or holding property of the decedent:

(1) acted in bad faith in failing to comply with the written demand or instruction; or



(2) refused to respond to the written demand or instruction within ten (10) business days after receiving the demand or instruction, if the demand or instruction is consistent with this article.

SECTION 3. IC 29-3-9-12 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2014]: Sec. 12. (a) This section applies only to a guardianship of the property of a minor or an incapacitated adult.

(b) If a third party fails to comply with a guardian's written demand or instruction that:

(1) was issued within the scope of the guardian's authority; and

(2) is consistent with this article;

the guardian may bring an enforcement proceeding to compel compliance in the court having jurisdiction over the guardianship.

(c) A court may award attorney's fees and costs to the guardian in an enforcement proceeding under subsection (b), if the person indebted to the guardianship estate or holding property of the guardianship estate:

(1) acted in bad faith in failing to comply with the guardian's written demand or instruction; or

(2) refused to respond within ten (10) business days after receiving the guardian's written demand or instruction, if the demand or instruction is consistent with this article.

